

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6368 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HIRABHAI VASHRAMBHAI DESAI

Versus

STATE OF GUJARAT

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Appearance:

Mr. Mehul Vakharia for MR TUSHAR MEHTA for Petitioner  
MR BS PATEL for Respondent No. 4.

Mr. T.H.Sompura, ASSISTANT GOVERNMENT PLEADER  
for respondent nos. 1,2 and 3.

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 13/11/97

ORAL JUDGEMENT

Shri Haribhai Vasarambhai Desai, promoter of Peplu Gopalak Vividh Karyakari Sahakari Mandali Ltd. has filed the present petition to challenge the order passed by the respondent no. 2 granting registration for the respondent no. 4 co-operative society as well as the orders passed by the respondent no. 3 and respondent no. 1 who have rejected the appeal and Revision Application

preferred by the present petitioner against the order of the respondent no. 2 passed on 1.1.1997.

2. The present petitioner had applied on 26.12.1995 to get a registration as a Vividh Karyakari Sahakari Mandli Ltd. for village Poplu under the provisions of the Gujarat Co-operative Societies' Act, 1961. It seems that after that date, the respondent no. 4 had applied through its promoter Shri Ishwarbhai Pirabhai Desai for getting similar registration under Gujarat Co-operative Societies Act, 1961. It is not quite clear from the material on record as to what is the exact date of the application given by the respondent no. 4. But it is also not disputed that the application of the respondent no. 4 was after the application of the petitioner.

3. After getting the said application, the respondent no. 2 processed both the applications and he came to the conclusion that the registration should be granted to the respondent no. 4 and he took that decision and informed the present petitioner by his letter dated 1.1.1997 about rejection of their application and granting of the application of respondent no. 4. While informing the present petitioner by the letter dated 1.1.97 at Annexure "D", it has been mentioned therein that in view of the provisions of the Gujarat Co-operative Societies Act, 1961, there could be only one co-operative society in a village and on that ground their application has been rejected by him. The present petitioner had challenged the said order passed by the respondent no. 2 by preferring an appeal and the said appeal bearing no. 19 of 1997 has been rejected on 1st April, 1997 by confirming the order passed by the respondent no. 2 of granting licence to the respondent no. 4. Against the said decision, the present petitioner had preferred a Revision Application before the State Government under the provisions of section 155 of the said Act and the said Revision Application has been rejected by the order dated 26.6.1997 and hence the petitioner has come before this Court.

4. It is the main contention of the petitioner that in view of the provisions of section 9 of the Act, it was incumbent upon the respondent no. 2 to give reasons for rejecting their claim and as the respondent no. 2 has not given any reasons for rejecting their claim, the said order of the respondent no. 2 is arbitrary and illegal. It is further contended on behalf of the petitioner that the claim of the respondent no. 2 that their application has been rejected on the basis

that there should be only one co-operative society in a village is not proper and the said provisions of section 4 of the Act will come into play only in case there was already in existence , a co-operative society in the village. The learned advocate for the petitioner therefore, vehemently urged before me that this Court should be pleased to quash and set aside the order passed by the respondent no. 2 on 1.1.1997 and the orders passed by the superior authorities by which the order of the respondent no. 2 has been confirmed and registration of the respondent should also be cancelled and the matter be remanded to the respondent no. 2 to re-consider the claims of both the petitioner as well as respondent no. 4 and pass an appropriate order after giving an opportunity of hearing to both the petitioner as well as respondent no. 4.

5. It is necessary to consider the provisions of section 4 of the Gujarat Co-operative Societies' Act, 1961 in order to decide the controversy raised before me. The said provision of section 4 of Gujarat Co-operative Societies' Act is running as under:

"4. Societies which may be registered- A society, which has as its object the promotion of the economic interests or general welfare of its members, or of the public, in accordance with co-operative principles, or a society established with the object of facilitating the operations or any such society, may be registered under this Act:

Provided that it shall not be registered, if in the opinion of the Registrar, it is economically unsound, or its registration may have an adverse effect upon any other society, or it is opposed to, or its working is likely to be in contravention of public policy."

Thus, if the above provision of section 4 is considered, then it would be quite clear that if the Registrar is of the opinion that it will be economically unsound to have two societies in the same locality then he can refuse the registration to a society. Said section nowhere says that for rejecting the claim of the society for getting registration under section 4, there must be in existence of a registered society prior to the application which is being rejected under section 4 of the Act. If the provisions of section 4 are read carefully, then it would be quite clear that the section

nowhere lays down specifically that one of the societies must be prior existing at the time of consideration of the application given by another society. Admittedly the respondent no. 2 was considering the claims of two societies i.e. the present petitioner as well as respondent no. 4 and after considering the application, the Registrar found that the registration should be granted to the respondent no. 4 and he came to the conclusion that it would not be economically sound to grant registration to the present petitioner and he has accordingly informed the present petitioner. If the letter Annexure "D" is considered, then it would be quite clear that for rejection of the claim of the present petitioner, the respondent no. 2 has given a reason by relying on the provisions of section 4 of the said Act. It could not be said that the respondent no. 2 has not given any reasons for rejecting the claim of the present petitioner. Even if the orders passed by the appellate authority as well as revisional authority are considered, then also it would be quite clear that they have also taken into consideration the decisions taken by the respondent no. 2 on the basis and on the ground that the respondent no. 2 had rejected the claim of the present petitioner only on the ground that there should be registration only of one society and it would be economically unsound to grant registration to two societies. Therefore, in the circumstances, I am unable to accept the contention raised by the learned advocate for the petitioner that the respondent no. 2 had not given any reasons for rejecting the claim of the present petitioner.

6. The respondent no. 2 has considered the claims of both the present petitioner as well as that of the respondent no. 4. There is no material on record to show that the said consideration was done by the respondent no. 2 maliciously or there was any malafide on the part of the respondent no. 2 in rejecting the claim of the present petitioner. The respondent no. 2 has considered the claim of both the present petitioner as well as that of the respondent no. 4 on the material available before him and has come to the conclusion that the respondent no. 4 was better financially based society. That finding of him is a finding of fact and there is no material on record to show that the said finding of fact is either perverse or manifestly erroneous so as to interfere with the said finding by exercising the jurisdiction either under Article 226 or 227 of the Constitution of India. Therefore, in the circumstances, when the respondent no. 2 as well as other two authorities above him have found that the

discretion used by the respondent no. 2 was quite sound in view of the material on record, it would not be open for this Court to interfere with the said finding by exercising jurisdiction under Articles 226 and 227 of the Constitution of India.

7. The respondent no. 4 has been granted licence and as per the observations made by the revisional authority, the respondent no. 4 has already started functioning. Therefore, there could not be now setting back the clock. In any way, I am unable to hold that the order passed by the respondent no. 2 is either arbitrary or illegal. I therefore, hold that the present petition deserves to be summarily rejected. I accordingly reject the same. Notice is discharged with no order as to costs.

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